HISTORY AND DESCRIPTION OF THE PUBLIC TRUSTEE

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1.0 BACKGROUND

In 1949, the Public Trustee for the Province of Alberta became the successor in office to the Administrator of Estates of the Mentally Incompetent, the Official Guardian and the Public Administrator as appointed under the *Judicature Act*, pursuant to the *Public Trustee Act.* All property that had been vested in these appointments prior to July 1, 1949, now vests in the Public Trustee.

The Office of the Public Trustee has two offices, one in Edmonton and one in Calgary. The Edmonton office is responsible for matters from Red Deer area north, and the Calgary office is responsible for matters south of Red Deer. Both offices are under the direction of the Public Trustee, who is responsible to the Minister of Justice and Attorney General. The *Public Trustee Act* requires that the Public Trustee be a barrister and solicitor with not less than 10 years standing.

Administration of deceased estates, dependent adult estates, and official guardian files (dealing with minors) is performed by the Director, Managers, and Assistant Managers of Estate Administration, Trust Officers, Assistant Trust Officers, and their support staff.

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2.0 AUTHORITY

2.1 *Public Trustee Act*

The powers of the Public Trustee are those given or imposed by the *Public Trustee Act* as well as any other powers and duties that the Lieutenant Governor in Council may prescribe *(s. 2(2)* of the *Public Trustee Act)*. The Public Trustee derives the bulk of its authority from the provisions contained within *s. 4* of the *Act*.

Section 5 of the *Act* dictates that the Public Trustee is to be served with notice of each application made to a court in respect of the property of a minor, missing person, or mentally incompetent person. Previously, once the Public Trustee had been served on behalf of one of these persons, the Public Trustee became the guardian ad litem. This is no longer the case. Now, a person must apply to the court to have the Public Trustee appointed as guardian ad litem *(Public Trustee Act ss. (3), (3.1) & (3.2))*. The Public Trustee will not become guardian ad litem without Court appointment. Such an appointment cannot proceed until the Public Trustee has consented to such an appointment and upon certain terms and conditions *(Public Trustee Act s. 19)*.

Property (except for wages and salary) to which a minor is entitled under intestacy or

under a Will, settlement, trust deed, or in any other matter whatsoever, and for whose estate no person has been appointed guardian by the issue of a grant of trusteeship or appointed as the trustee of the estate of a minor, must be paid or transferred to the Public Trustee *(Public Trustee Act, s. 6)*.

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2.2 Other Legislation

The Public Trustee does not solely derive its authority from the *Public Trustee Act*. There is other legislation.

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2.2.1 *Family Relief Act*

The *Family Relief Act*, provides the authority for the Public Trustee (as trustee of a dependent adult or on behalf of a minor) to make an application for their maintenance and support. *(Family Relief Act, s. 13(2)(a&b))*. Where the Public Trustee is the trustee of the estate of a dependant, notice of an application in respect of an estate in which the dependant is interested must be served on the Public Trustee, and the Public Trustee is entitled to appear and to be heard on the application *(Family Relief Act, s. 13(3))*.

The *Family Relief Act* also contains a provision absolving the Public Trustee of its obligations in certain prescribed circumstances. If it appears that at the date of the deceased's death the spouses were living together and

a. all the children of the deceased who at the date of the deceased's death were under the age of 18 years, and
b. all the children of 18 years of age or over who by reason of mental or physical disability were unable to earn a livelihood,

were living with or being supported by the spouses or either of them, there is no obligation on the guardian, Public Trustee or other person representing a child who is a dependant under this Act to make an application on behalf of the child if the guardian, Public Trustee or other person is satisfied that the child is receiving adequate maintenance and support *(Family Relief Act, s. 14)*.

Simply put, this provision allows some discretion in determining whether or not an application under the *Family Relief Act* should be made.

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2.2.2 *Trustee Act*

The Public Trustee also looks to the *Trustee Act* for general authority as it applies to trustees. Perhaps the most significant of these provisions is *s. 5* which enumerates those investments which are authorized trustee investments. Other provisions include *ss. 14 & 16* which deal with the appointment of substitute trustees; *ss. 33-37* concerning the payment of income and the sale of property for the maintenance and education of minors; *ss. 42 & 46* concerning the variation of trusts and the appointment of judicial trustees. *(s. 42)*

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2.2.3 *Dependent Adults Act*

The *Dependent Adults Act* also contains provisions which touch on the authority of the Public Trustee in its capacity as trustee of dependent adults. Sections 28 and 29 provide the primary authority for a trustee of the estate of a dependent adult. They outline what a trustee is entitled to do in regards to the estate, subject to any restrictions or conditions imposed by the court. In addition to the basic authority conferred by ss. 28 and 29 of the *Dependent Adults Act*, there may be additional authority conferred on the trustee by the court as outlined in s. 30 of the *Act*. It should be noted that these additional powers must be conferred by the court; and affording adequate justification to acquire any of the enumerated powers, a trustee must apply to the court to receive them. Sections 33 and 34 are the provisions outlining the appointment of the Public Trustee. Section 33 mandates that where there is a person in need of a trustee and there is no one willing, able or suitable to act as a trustee, the Public Trustee shall apply to have himself appointed or someone else appointed as trustee of the estate. Section 34 allows the court to appoint the Public Trustee as trustee of the estate of a dependent adult if it is not satisfied with the person proposed as a trustee in an application, after giving notice to the Public Trustee of its intention to do so.

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2.2.4 *Administration of Estates Act*

This *Act* provides the Public Trustee with the authority to act in a monitoring or advisory capacity in regard to applications for a grant. The term "grant" is defined in the Act to include a grant of probate, a resealed grant of probate or administration, a grant of administration, or a grant of trusteeship of the estate of a minor (as per *s. 1(e) of the Administration of Estates Act*). Section *6(1)(a)* requires notice of a grant application to be served on the Public Trustee if a minor, a person who was a minor at the date of death, or a missing person is interested in the estate to which the application pertains or if the Public Trustee is the trustee of the estate of a Dependent Adult to which the application pertains. Section *6(2)* provides that no application for a grant will proceed until the Public Trustee, or the trustee, is represented on the application or expresses the intention not to be represented. Section *6(2.1)* provides that in the case of a trust created by a Will where an Executor or some other person holds the trust for the benefit of a minor, the Public Trustee may express the intention not to monitor the trust or represent the interests of the minor, while *s. 6(2.2)* allows the court, after giving an opportunity to the Public Trustee to make representations, to direct that the Public Trustee monitor the trust according to any terms or conditions it specifies.

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3.0 ADMINISTRATION OF ESTATES AND THE PUBLIC TRUSTEE

3.1 Notice Provisions

When any grant is applied for under Rule 10 (1) or (2), and a minor child, dependent adult (for whom the Public Trustee acts as Trustee), or a missing person has an interest in the estate, notice must be served on the Public Trustee.

The *Administration of Estates Act, ss. 6 & 7*, requires notice to be served on the Public Trustee. Section 6 sets out that when an application for a grant is made, a copy of the application must be sent to the Public Trustee if there is a minor or missing person interested in the estate to which the application pertains. Section 6 also requires this notice if the Public Trustee is the trustee of the estate of a dependent adult interested in the estate. In fact, an application will not proceed until the Public Trustee is represented on the application or has expressed an intention not to be represented.

Section 7 of the *Act* refers to notice requirements on making an application for a grant of probate or administration as it relates to dependants. Section 7(4) instructs that a copy of the application be sent to the Public Trustee if , at the time of the deceased's death, the deceased is survived by a minor child. Similar notice must be given to the Public Trustee if the Public Trustee is the trustee of the estate of a child of the deceased who, although an adult at the date of the deceased's death, is unable to earn a livelihood due to a mental disability.

The Rules set out specific requirements to satisfy notice requirements when an application for a grant is made. These are set out in Rule 26 which states:

An applicant must serve notice of any application for a grant

a. in Form NC 19, Form NC 20, or Form NC 21 to the persons listed in Form NC 6 as filed, and
b. in Form NC 22, Form NC 23, Form NC 24 or Form NC 24.1 to the appropriate persons, if any.

Where a person to be served is a minor, dependent adult for whom the Public Trustee acts as trustee, or a missing person, the Public Trustee must be served with notice in the appropriate form, together with a fee.

Even where one may have given notice to the Public Trustee by virtue of using Form NC 19 or Form NC 20, notice to the Public Trustee under Form NC 24.1 is still required (See Rule 26(1)).

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3.2 Preference in Grant Applications

While Rule 11 sets out the priority given to those applying for a grant, attention should be given to *s. 20* of the *Public Trustee Act*. This section sets out circumstances where the Public Trustee will be given priority above all others in applying for a grant.

The Public Trustee assumes the preference or priority of the person the office represents.

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3.3 Grants for a Limited Time or Grants for a Particular Purpose

The court has a wide discretion in making special or limited grants of administration by virtue of Section 29 of the *Administration of Estates Act*. Depending on the circumstances, the court may issue a grant subject to any condition it thinks fit. Again, this may involve the appointment of the Public Trustee as the Administrator of the special grant. The role of the Public Trustee in such grants can be seen in the interaction of the Rules and the *Administration of Estates Act. (ss. 24-29)*.

The Public Trustee does have some discretion in whether or not to act. Although the court may issue a grant to the Public Trustee, the Public Trustee must consent to the appointment as a Trustee, Executor, Administrator, or Guardian in these circumstances (*Public Trustee Act*, s. 19(2)).

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3.4 Bonding

Rule 28 sets out bond provisions as they relate to Personal Representatives not resident in Alberta.

If a non-resident Personal Representative applies to the court to have such bond requirements dispensed with or reduced, the Public Trustee will review such applications on behalf of the interests of a minor beneficiary, dependent adult beneficiary for whom the Public Trustee acts as trustee, or missing person and may make representations to the court regarding bonding requirements. The Public Trustee may, if circumstances warrant, apply under Rule 30(1) or (2) for an order that bonding be required even if the Personal Representative falls within Rule 28(2).

Once notice of an application for dispensing with or reduction of bond requirements is received, the Public Trustee's position will depend on the circumstances. The Public Trustee may direct a letter to the clerk of the court outlining its position on the matter or may appear in court to make representations concerning its position. If the Public Trustee is of the opinion that a bond requirement which is equal to the gross value of the minor's estate is too onerous, representations to the court may be made.

However, the general position of the Public Trustee is that it does not possess the authority to waive bonding requirements and that such decisions should be left to the court.

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3.5 Trusteeship Applications for the Estate of a Minor

When served with notice of an application for a grant of trusteeship for the estate of a minor, the Public Trustee will assess a number of factors when determining what position should be taken with respect to the application.

Such factors include:

a. particulars concerning the background of the minor and the minor's parents;
b. particulars concerning the relationship of the applicant to the minor, especially if the applicant is not a parent of the minor ;
c. the motives behind the application;
d. particulars concerning the assets the minor has or is to receive;
e. particulars concerning the proposed manner which the applicant intends to provide maintenance for the minor and invest the minor's assets;

Usually the Public Trustee will take a neutral position in regards to such applications, but will insist bonding be obtained.

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3.6 Formal Proof of a Will

The Public Trustee is considered one of the classes of individuals interested in an estate when the office represents a minor, missing person or acts as trustee for a dependent adult and, as such, may apply for an order under Rule 75.

Applications include:

a. obtaining formal proof of a Will, whether or not an application for a grant has been made.
b. setting aside a grant already issued and requiring formal proof of the Will.
c. preventing the issue of a grant and requiring formal proof of the Will.
d. obtaining an order that the deceased died intestate.
e. requesting the appointment of a Personal Representative.
f. requesting the appointment of a Personal Representative other than the one appointed by a grant that has been issued.
g. restraining a Personal Representative from exercising any powers while an application is being made.
h. appointing a special Personal Representative to conduct an investigation.

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3.7 Accounting

As noted earlier, the Public Trustee must be served with notice regarding an application for a grant under Rule 10 and 13 when a minor, dependent adult for whom the Public Trustee acts as trustee, or missing person has an interest in the estate. Once notice has been served, the Public Trustee may at any time, as an interested person, apply to the court for an order requiring the Personal Representative to give an accounting of the administration of the estate (Rule 97(3)). Regardless, the Public Trustee is entitled to an accounting of the estate administration from the Personal Representative at regular intervals which, unless the court orders otherwise, is every 2 years (Rule 97(1) and (2)). Section 31 of the *Public Trustee Act* authorizes the Public Trustee to apply to the court to compel a Personal Representative of an estate in which the Public Trustee is interested to pass accounts. The *Administration of Estates Act* states that a Personal Representative must make an accounting whenever ordered, either at the instance of the court or on the application of someone interested in the estate *(Administration of Estates Act, s. 46)*.

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3.8 Releases

The Rules provide that a Personal Representative may obtain releases from the residuary beneficiaries on presentation of accounts. Whenever the Public Trustee represents a minor, dependent adult, or missing person who has an interest in a particular estate (as a residuary beneficiary), the Public Trustee must be satisfied that the accounting for the administration of the estate is satisfactory and that any compensation being sought by the Personal Representative is reasonable prior to signing a release on behalf of the person represented (Rule 101).

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3.9 Dispensing with the Formal Passing of Accounts

A Personal Representative may apply to the court to dispense with the formal passing of accounts and pass the accounts informally. Where the Public Trustee represents someone who is interested in the estate, the Public Trustee will review the documentation provided and make representations at the application on their behalf. If

the Public Trustee, representing a person interested in the estate, objects to the application to dispense with a formal passing of accounts, a notice of objection in Form ACC 3 must be filed and notice of same must be served in accordance with Rule 114.

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3.10 Passing of Accounts

The Public Trustee must be served with the documentation for an application to pass formal accounts if the Public Trustee represents a minor child interested in the estate, is the trustee of a dependent adult beneficiary, or if there is a missing person with an interest in the estate.

Once served with the documentation, the Public Trustee will either consent to the application and make representation to the court where appropriate, or file a notice of objection in accordance with Rule 114.

The Personal Representative must serve, on the Public Trustee, the notice of the hearing for the formal passing of accounts not less than 30 days prior to the scheduled date of the hearing (Rule 107(2)).

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4.0 DEPENDENT ADULTS AND THE PUBLIC TRUSTEE

The appropriate portion of the Rules should be utilized in conjunction with the *Dependent Adults Act* in order to fully understand how the rules affect the role of the Public Trustee.

The Rules dealing with dependent adults often refer to interested persons, though the rules do not provide a definition of who is considered an interested person. However, the *Dependent Adult Act* does. Section 1(i)(i) indicates that an interested person includes the Public Trustee.

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5.0 MINOR'S INTERESTS AND THE PUBLIC TRUSTEE

5.1 Minor Beneficiaries Under Intestacy

The Public Trustee represents the interests of all issue of a deceased intestate as defined by the *Intestate Succession Act* who are under eighteen years of age. Section 1 (b) of the *Intestate Succession Act* defines issue as including all lineal descendants, whether born within or outside of marriage of the ancestor. Therefore this includes any minor children of a man or woman dying intestate, whether the children were born inside or outside a marriage. It also includes all minor lineal descendants of the ancestor, whether born within or outside a marriage.

There are a variety of situations in which the Public Trustee will become involved on behalf of minor beneficiaries who become interested in an estate pursuant to the laws of intestacy. They include the following:

1. Where the deceased dies intestate and is survived by a lawful spouse and minor children, the Public Trustee does not have the authority to forego the beneficial share of the minors. The only manner in which the surviving spouse may obtain a greater share of the estate than that which is granted under the law of intestacy, would be to initiate an application under the *Family Relief Act* or, in appropriate circumstances, the *Matrimonial Property Act*.

2. Where a deceased dies intestate and is predeceased by a child who would have been a beneficiary of the deceased's estate under the laws of intestacy had the child survived the deceased, the Public Trustee will represent the interests of any minor issue of that deceased child given their interest in the estate of their deceased grandparent, pursuant to *s. 4* of the *Intestate Succession Act*. Had there been a surviving spouse of the deceased intestate in this same scenario, the spouse would take the same share of the estate as if the child who had predeceased the deceased intestate had been living at that date, as per *s. 3(4)* of the *Intestate Succession Act*.
3. In estates where a deceased individual dies leaving a Will in which no provision has been made for the distribution of the residue of the estate, the Public Trustee will represent the interests of any minor beneficiaries who may become interested in the distribution of the residue of the estate pursuant to the provisions of the *Intestate Succession Act*.

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5.2 Advances to Minors

The Public Trustee's authority with respect to advances made to minors is found in s. 7 of the *Public Trustee Act* and *ss 33* through *37* of the *Trustee Act*.

There are two primary situations which must be examined with respect to advances to minors:

1. Situations where the Public Trustee is already in possession of funds on behalf of a minor, and
2. Situations where the Public Trustee has not yet received an interest or share to which a minor is entitled (when the funds do not exceed $4,000.00).

Section 7 of the *Public Trustee Act* provides the Public Trustee with the discretion to make advances to minors. Where the funds held by the Public Trustee do not exceed $4,000.00, the Public Trustee has absolute discretion in advancing both the income and capital to the minor for their maintenance, education, benefit, or advancement purposes. However, if the Public Trustee is not yet in possession of such funds but is to be paid funds which will not exceed $4,000.00, the *Public Trustee Act (s. 7(1)(c)(i)(C))* allows the Public Trustee to consent to the transfer of the funds from the person holding them to a person who is, in the opinion of the Public Trustee, a responsible adult. In other words, the funds would never come into the possession of the Public Trustee. The Public Trustee has developed an application form for such responsible adults to apply to the Public Trustee for authorization for the transfer of these funds. In instances where the funds exceed $4,000.00, the option of consenting to the transfer of funds to a responsible adult does not exist.

In situations where the funds being held do not exceed $75,000.00, the Public Trustee is authorized to advance to the person who has lawful custody of the minor any sum deemed to be necessary for or towards the maintenance and education of the minor. This can include encroachment on the capital of the funds being held. Approval or leave of the court is not required in such instances. Where the funds being held exceed $75,000.00, the Public Trustee has complete discretion in advancing to the person having lawful custody of the minor the income from said funds for the maintenance and education of the minor, but must apply to the court for advancements greater than this and it is in the discretion of the court to authorize the Public Trustee to advance such amounts.

Sections 33 through 37 of the *Trustee Act* also give rather broad discretion in advancements of funds being held for the maintenance, education, benefit or advancement of the minor for whom the funds are being held. Section 34 provides the

trustee with the authority to use its discretion in advancing funds to the parent or guardian of the minor from the income earned on the funds being held on behalf of the minor. However, leave of the court is required if the trustee wishes to dispose of real or personal property being held in trust in order to advance funds to provide for the maintenance and education of the minor.

The Public Trustee will not exercise its discretion in advancing funds unless the parent or guardian can show that they are unable to supply sufficient funds for the adequate maintenance of the minor.

Where life insurance proceeds are received on behalf of a minor, they may be advanced for maintenance and educational expenses of the minor in the discretion of the Public Trustee.

When exercising its discretion in advancing funds for the maintenance of a minor, the Public Trustee will take into consideration funds provided by the parent or guardian for such purposes as well as any other benefits received by the minor such as Child Tax Benefits or Canadian Pension Plan Orphans Benefits.

In cases where the funds are being held by the Public Trustee on behalf of a minor pursuant to an inter vivos or testamentary trust, the Public Trustee will advance funds according to the terms set out in the trust.

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5.3 *Age of Majority Act*

Section 1 of the *Age of Majority Act* states that every person attains the age of majority and ceases to be a minor on reaching the age of 18 years. The Public Trustee ceases to be the statutory guardian of the estates of minors once they reach 18 and accounts to the minors for the funds held on their behalf.

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5.4 Monitoring a Minor's Trust

In situations where the Public Trustee has notice with respect to a minor's trust of funds being held and invested by another party, such as a trustee named in a Will, and the Public Trustee has requested and has been receiving annual accountings with respect to the trust, the Public Trustee ceases to represent the interests of the minor when the minor attains the age of eighteen. This is the case even though the terms of the trust may delay distribution to the minor for some time beyond their eighteenth birthday.

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5.5 Public Trustee Acting as Trustee and Investing a Minor's Trust

In situations where the Public Trustee is acting as trustee and investing a minor's trust funds pursuant to terms of a Will which states that the trust is not to be distributed to the minor until some time after the minor's eighteenth birthday (i.e., age 21), then the Public Trustee will not, and is not obligated, to account to the minor until distribution occurs.

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5.6 Public Trustee Acting as Trustee and Investing Trust Funds of a Minor Residing in a Jurisdiction where the Age of Majority is not 18 Years of Age

In this situation, the Public Trustee is still obligated by Alberta law to account to the minor when they reach the age of eighteen. Given the circumstances, the Public Trustee may contact the office's counterpart in the other jurisdiction and advise them of the pending distribution of the minor's funds.

In the situation where under the terms of a Will a minor is given a portion of the estate but there is no provision for the time of payment or distribution and the Public Trustee is investing the minor's share of the estate pursuant to s. 6 of the *Public Trustee Act*, the Public Trustee will distribute and account to the minor when the child reaches eighteen years of age.

There may also be circumstances where the Public Trustee is requested to hold funds received from an action from another jurisdiction on behalf of a minor who is resident in Alberta. It may also be the case that the other jurisdiction has a different age of majority and it may not have a counterpart to the Public Trustee which would be able to hold funds on behalf of the minor. In such cases, the Public Trustee will make accommodations to hold these funds, but will account to the minor when the minor attains the age of majority according to Alberta law.

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5.7 Accounting to the Public Trustee

In situations where a trust for a minor beneficiary established under a Will is maintained by a private trustee, the Public Trustee requires a Statement of Assets and Liabilities at the commencement of the administration of the estate, a Statement of Receipts and Disbursements with respect to the administration of the estate, a final Reconciliation Statement and a Statement of Proposed Distribution to the beneficiaries; confirmation that the trust has been established in authorized trustee investments (as per the *Trustee Act*); and annual statements of account with respect to the trust until the minor attains the age of majority regardless of whether or not the trust is to continue beyond that time. If the trustee fails to account properly: submits deficient statements, fails to disclose income or capital, invests in unauthorized investments, or does not perform their duties in a proper and reasonable manner, the Public Trustee will make an application to the court to have the trustee formally pass his or her accounts under Rule 108.

In situations where there is a testamentary trust established as above, but where the trust is to continue until the minor beneficiary attains, for example, the age of 25 and where there may be potential contingent minor interests, the Public Trustee requires annual statements of account so long as there are still contingent minor interests in the trust even if this extends beyond the minor beneficiary's attainment of the age of majority (18 years of age).

In cases where a trust has been established under a Will for a minor in which the funds are required to be paid to the Public Trustee pursuant to s. 6 of the *Public Trustee Act*, a full estate accounting including the Statement of Assets and Liabilities, Statement of Receipts arid Disbursements, and Statement of Proposed Distribution to the beneficiaries will be reviewed by the Trust Audit Department of the Public Trustee Office and, if satisfactory, the Public Trustee will sign a release for the distributive share. If the distributive share is simply paid to the Public Trustee without an accounting being provided, the Public Trustee will apply to the court for an order directing the Personal Representative of the estate to pass his or her accounts formally.

Where the Public Trustee receives funds on behalf of a minor as a result of a personal injury settlement or damage award resulting from the death of a parent, the Public Trustee will require a Statement of Funds Received and Disbursed from the solicitor acting on behalf of the plaintiff (next friend on behalf of the minor) for review and will

also monitor the solicitor's legal account. The Public Trustee will request that the account be taxed where in the office's opinion the account is excessive.

There are situations where the Public Trustee is appointed as judicial trustee or a substitute trustee by court order. Prior to consenting to an appointment as judicial trustee pursuant to *s. 46* of the *Trustee Act* or a substitute trustee pursuant to *s. 14* of the same *Act*, the Public Trustee may require that the accounts of the estate or the trust be passed by the court up to the date of the application and prior to the previous trustee being discharged.

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5.8 Accounting by the Public Trustee

When funds have been received by the Public Trustee pursuant to *s. 6* of the *Public Trustee Act*, the Public Trustee is required to account to the minor pursuant to *s. 6(2)* when the minor reaches the age of eighteen . However, if the Public Trustee is trustee of the estate of a minor pursuant to a trust created under some trust instrument, the Public Trustee must account to the minor according to the terms of the trust instrument. At the time of final accounting, a statement of receipts and disbursements, along with the proposed administration fee of the Public Trustee and a release, will be sent to the minor. Once the signed release has been received by the Public Trustee, a cheque for the trust funds held by the Public Trustee will be provided. If the minor has concerns with the accounting or the proposed administration fee, the Public Trustee will apply to the court to have the accounts passed and the amount of compensation for the Public Trustee assessed and final distribution authorized.

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6.0 DECEASED ESTATE ADMINISTRATION BY THE PUBLIC TRUSTEE

Deceased estate administration in the Office of the Public Trustee is governed by the *Public Trustee Act (ss. 20-24)* and Administration of *Estates Act (ss 19, 25-28)*.

Section 19 of the *Public Trustee Act* provides that the Public Trustee may be appointed as an Administrator by a court, judge, the Minister of Justice, or the Attorney General provided that the Public Trustee has been served with notice prior to the appointment, has consented, and has been given the opportunity to make representations with respect to the terms and conditions of the appointment.

The following are examples of circumstances where the Public Trustee may become involved as the Executor or Administrator of an estate:

1. When a deceased dies intestate, was a resident of Alberta with property situated in Alberta, and leaves no next-of-kin resident in Alberta who may apply for a grant, the Public Trustee is entitled to apply and receive a grant of letters of administration.

2. When a deceased dies intestate, who was resident in Alberta with property situated in Alberta, and leaves next-of-kin who renounce their right to apply, the Public Trustee is entitled to apply for and receive a grant of letters of administration. However, before the Public Trustee consents to apply, the office will require renunciations from all those next-of-kin who have a prior right to apply for a grant. It is only in exceptional cases that the Public Trustee will agree to administer the estate if there are next-of-kin residing in Alberta who are capable of proceeding.

3. The Public Trustee may apply for a grant in a situation where husband and wife die intestate in a common disaster and they are survived by minor children. However, the Public Trustee may

not apply if a competent adult referred to in Rule 11(2) comes forth to make an application. If the husband and wife were survived by adult children in addition to minor children, the Public Trustee will advise the surviving adult children of their right to apply for a grant. However, in many cases, especially where the adult children have only recently reached the age of majority, the adult children may nominate the Public Trustee to apply.

4. The Public Trustee may apply for a grant of administration with will annexed where there is no named Executor in a Will or the named Executor renounces their right to apply or has predeceased the testator and there is no one in Alberta other than the Public Trustee willing or able to act.

5. The Public Trustee may apply in circumstances where a person dies intestate, having been living in a common law relationship immediately preceding his or her death, and is survived by a lawful spouse (from whom the deceased had been, separated) and minor children. The surviving lawful spouse, although having a prior right to apply, may reside outside of Alberta, or may wish to renounce.

6. Where a person dies intestate in another jurisdiction leaving property situated in Alberta, and a grant is issued in that other jurisdiction, the foreign grant can be resealed in Alberta. However, where there are only one or two assets of small value to be dealt with in Alberta, the Public Trustee is often requested to apply for a separate grant to deal with the property in Alberta and account to the domiciliary Administrator. The value and nature of the estate will dictate which provision the Public Trustee will utilize to apply for a grant. If the Public Trustee is aware of any person resident in Alberta entitled to apply, the Public Trustee must give notice of its intention to apply and must wait one month before applying for letters of administration.

7. In circumstances where a deceased dies intestate and leaves as the only property a fractional interest in a mines and minerals title, which will devolve to a number of next-of-kin, none of whom wish to apply for a grant, the Public Trustee, on receiving renunciations from all of them, will apply.

8. In certain circumstances, the court may grant temporary administration of an estate to the Public Trustee. This occurs when there are next-of-kin, normally resident in Alberta, who are absent and ultimately expected to return.

9. In circumstances where the next-of-kin having a prior right to apply for letters of administration cannot agree on who should apply, the court may request the Public Trustee to apply. It should be noted that in such circumstances, the Public Trustee will resist such a request.

10. In circumstances where conflict has arisen concerning obtaining, recalling, or revoking any grant of probate or administration (whether before or after litigation has been commenced), the Public Trustee may be appointed as Administrator pendente lite (pending litigation) of the deceased's property.

The following are examples where the Public Trustee's may become involved in the administration of estates of those persons dying testate:

1. Where the Public Trustee is named as Executor in the Will.

2. Where the Executor named in the Will renounces because the estate is of little or no value. For example, a corporate Executor who renounces because the value of the estate would not justify its fee for administration.

3. Where the Executor named in the Will renounces, and the Public Trustee consents, the Public Trustee will seek renunciations from those persons having a prior right to apply and if all renunciations are obtained, will apply.

4. Where it is necessary that the property of a deceased person be taken possession of and forthwith administered, the court may on application direct the issue of a grant of administration to the Public Trustee upon any limitations and restrictions as are necessary

5. The Public Trustee may, where necessary, take possession of the real or personal property of a person dying testate or intestate in order to preserve and protect it. The Public Trustee construes this section narrowly and will, in most cases, obtain a court order confirming the office's right to take possession of the property and administer it until either further order of the court or until a grant has been obtained in the estate.

6. In situations where there is litigation pending with respect to a disputed Will of a deceased person and no application for a grant can be made pending the outcome of the litigation, the Public Trustee may be appointed by the court as Administrator of the estate pending completion of the litigation.

7. Where there is an attempt to appoint the Public Trustee as judicial trustee pursuant to *s. 46* of the *Trustee Act*, the Public Trustee will carefully review circumstances and determine if there is any other suitable party prior to giving consent to the appointment pursuant to *s. 19* of the *Public Trustee Act* and will most often try to resist such an appointment.

8. Where the Public Trustee has been appointed as the trustee of the estate of a missing person, the Public Trustee may eventually administer the estate, either by obtaining an order of the Court for leave to swear to the death of the missing person for the purpose of obtaining a grant where there are known next-of-kin under intestacy or beneficiaries under a Will, or accounting to the Provincial Treasurer after two years where there are no known next-of-kin under intestacy or beneficiaries under a Will.

9. The Public Trustee may administer the estates of deceased mentally incompetent persons for whom the Public Trustee was acting as trustee during their lifetime.

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7.0 MINISTERIAL ORDERS CONCERNING THE ADMINISTRATION OF DECEASED MENTAL INCOMPETENT ESTATES

Pursuant to s. 15(3) of the *Public Trustee Act*, the Minister of Justice and Attorney General may grant an order appointing the Public Trustee as the Administrator of the estate of a deceased mentally incompetent person when it is expedient to do so.

The Public Trustee will apply for such a Ministerial Order if the following conditions are met:

1. The deceased has no family in Alberta or the deceased's family has been given the opportunity to administer the estate but has declined to do so.

2. The deceased had no spouse or dependants and therefore, there is no possibility of an application under the FRA or under the MPA.

3. The deceased had no real property outside of Alberta.

4. The deceased died without a Will (intestate).

5. The estate of the deceased has a value of $50,000.00 or less.

If these conditions exist, application for a Ministerial Order will proceed. The request for such an order must contain the following:

a. a statement indicating that the deceased was a mentally incompetent person,

b. the place and date of death of the deceased,
c. the residence of the deceased, and
d. a statement indicating that the deceased left no Will.

Once a Ministerial Order has been obtained, a certified copy of the order is filed with the Surrogate Court in the judicial district in which the deceased resided and in all other judicial districts where the deceased had real or personal property as per *s. 15(5)* of the *Public Trustee Act*.

The administration of the estate of the deceased then proceeds as any other deceased estate administration undertaken by the Public Trustee.

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8.0 PUBLIC TRUSTEE AND MISSING PERSONS

The Public Trustee derives its authority to act on behalf of missing persons from the *Public Trustee Act (ss. 4, 5, 9, 10, 19 and 33)*. A missing person is defined as a person who, after reasonable inquiry, cannot be found and whose present place of abode is unascertainable *(Public Trustee Act, s. 1(f))*.

The Public Trustee may act as custodian of the property of a missing person. When the Public Trustee is served with notice of an application to the court respecting the property of a missing person, the court may appoint, or a person, on notice, may apply to the court for the appointment of, the Public Trustee as the Trustee of the estate of the missing person. Pursuant to Rule 107(1) of the Rules, either the Public Trustee or a private trustee appointed by the court must be served with notice of a passing of accounts in an estate in which the missing person is interested (Form ACC 1).

The Public Trustee may become involved with respect to the property or estate of a missing person in two ways:

1. The property or estate of a missing person may be deposited with the Public Trustee.

2. When it appears that a person may be a missing person, the *Public Trustee Act* allows the Public Trustee to take possession of the property and preserve and protect it.

The property will be held until the person is located and the Public Trustee can then account to the individual for the property that was held and administered or until an order from the court is obtained declaring that the person is a missing person and appointing the Public Trustee as the trustee of the estate of the individual. Such an order also sets out the terms and conditions of the trusteeship to allow the Public Trustee to administer the estate or property. For such an order to be obtained from the court, the individual must fit into the definition as set out in *s. 1(f)* of the *Public Trustee Act* and have some interest in property. The Public Trustee does not have to post any security in the performance of its duties as a trustee according to *s. 32* of the *Public Trustee Act*.

Once appointed, the Public Trustee may then administer the estate pursuant to the *Public Trustee Act (ss. 9 & 10)* and the terms and conditions contained in the order. This could include investing assets in authorized trustee investments, advancing funds out of the capital or income for the maintenance of dependants, leasing or selling real property (which would require another court order), etc. As well, when served with notice of court applications respecting the property or estate in which the missing person is interested, the Public Trustee will make inquiries to ascertain what is needed to protect the interests of the missing person and will then appear in court to make representation where necessary.

The Public Trustee may become involved in the estate of a missing person by initially being served

with notice of a legal proceeding or application to the court in respect of an estate in which the missing person is interested. In this situation, where the Public Trustee has not yet been appointed trustee of the estate of the missing person by an order of the court and is not trustee or guardian ad litem until appointed by the court, the Public Trustee will assess the situation and appear at any court application to recommend to the court whether involvement in the proceedings on behalf of the missing person is required. If it is determined by the court that the involvement of the Public Trustee is required for the protection of the interests of the missing person, the Public Trustee will require an order of the court appointing him or her as trustee.

The Public Trustee, as the trustee of the estate of a missing person, must comply with s. 10 of the *Public Trustee Act* as it relates to the distribution of the property of the estate of the missing person.

Section 10(2) of the *Public Trustee Act* provides that the Public Trustee must not make a distribution of the estate of a missing person until the expiration of two years from the time the person was declared missing. After the expiration of the two years, such distributions may only be done as directed by an order of the Court of Queen's Bench in accordance with the procedures as set out in *s. 33* of the *Public Trustee Act*. However, *s. 10(1)* does allow the Public Trustee, without court authorization, to pay funds out of the income or capital of the property being held on behalf of a person declared to be missing for the maintenance and support of a spouse or child of the missing person. Such payments are in the discretion of the Public Trustee and not subject to the prohibition on distributions found in *s. 10(2)*.

Pursuant to *s. 33(2)* of the *Public Trustee Act*, property that is in the hands of the Public Trustee and that forms part of the estate of someone declared to be a missing person according to *s. 9* of the *Public Trustee Act*, may, in the case of money, be remitted to the Provincial Treasurer. In the case of property other than money, if in the absolute discretion of the Public Trustee, it is in the best interests of the estate that the property be sold and converted into money, it will be sold and the monies remitted to the Provincial Treasurer. This procedure would probably be undertaken in a situation where the Public Trustee was unable to locate any next-of-kin on intestacy or beneficiaries under a Will after all possible enquiries have been made.

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9.0 PUBLIC TRUSTEE AS SUBSTITUTE TRUSTEE

In certain circumstances, the Public Trustee will consent to act as a substitute trustee. This will occur when the Public Trustee has been appointed by court order under *s. 14(2)* of the *Trustee Act.*

There are situations when a trustee has begun to act but has not yet discharged or fully performed their responsibilities under the trust and where the trustee desires to be discharged. When this occurs, it is the responsibility of the trustee to apply to the court (Queen's Bench or Surrogate Court). The court has the authority to discharge the current trustee (once accounts have been passed) and either appoint a substitute trustee who has been nominated by the applicant or appoint some other competent person to act as trustee. It should be noted that the Public Trustee will not consent to such an appointment unless the retiring trustee has fulfilled his or her trust obligations up to the time that a substitute trustee is sought and until an order has been obtained passing accounts up to the date of the application seeking a substitute trustee.

The Public Trustee will not consent to being appointed as a substitute trustee for a trustee wishing to retire where there is a co-trustee of the trust willing to act.

The Public Trustee may also consent to its appointment as a trustee in circumstances where the court finds it practical and expedient to appoint a new trustee or to substitute an existing one or where there is currently no trustee or where a substitute for the current trustee is required pursuant to *s. 16 (1)* of the *Trustee Act*.

For instance, a new trustee may be required if the current trustee has been convicted of an indictable offense, is a bankrupt, is a corporation in liquidation or dissolved, or where the trustee is someone

who has a trustee or guardian appointed for him or her a certificate of incapacity issued against him or her.

Once appointed, the Public Trustee as substitute trustee will assume all of the duties of the trustee originally designated as trustee pursuant to the provisions of the trust document (i.e., the inter vivos declaration of trust or the Will). The Public Trustee will perform the functions of the original trustee. Where there is a minor beneficiary and the distribution date of the property to the minor is to occur after the minor's eighteenth birthday, the Public Trustee, as a substitute trustee, will continue to administer the trust on behalf of this beneficiary until the specified date of distribution arrives.

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10.0 PUBLIC TRUSTEE AS JUDICIAL TRUSTEE

The Public Trustee, upon consent, may act as a judicial trustee with respect to a trust or trust property if appointed by the court under *s. 46* of the *Trustee Act* and *s. 28* of the *Public Trustee Act*. The Public Trustee will not consent if requested to act in the capacity of a joint judicial trustee with another person. As a judicial trustee, the trustee is subject to the supervision and control of the court and the court may give the trustee specific directions.

The most common situation in which a judicial trustee is appointed is where problems have arisen in the administration of the trust property.

Prior to consenting to act as judicial trustee, the Public Trustee would have the current trustee (or Administrator, etc. as the case may be) provide a satisfactory statement of the current administration of the estate.

If the order appointing the judicial trustee does not provide specific directions it will be administered as any other estates. Any conflicts that precipitated the appointment will not be addressed unless specifically required in the appointment.

The Public Trustee will also require that the order specify the amount of remuneration the office is entitled to and which funds will bear this burden.

Finally, the order has to specify if or how often the judicial trustee must account to the court concerning the trusteeship.

When the need for the judicial trustee no longer exists (i.e., problems with the administration of the estate have been resolved, etc.), the Public Trustee (or the Executor or Administrator) will apply to the court to have the judicial trustee discharged. The Public Trustee will provide a full accounting of its administration of the trust as a judicial trustee and have its accounts approved by the court.

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11.0 PUBLIC TRUSTEE AS JOINT OR CO-TRUSTEE

Such an application is very unusual. The Public Trustee will review such an application very carefully to determine its position. It should be noted that it is the policy of the Public Trustee not to act as a co-trustee or joint trustee of a person's estate. When confronted with an application for such an appointment, the Public Trustee will most often refuse consent . Pursuant to *s. 19* of the *Public Trustee Act* no such appointment can proceed without this consent.

The rationale for refusing to act in such a capacity is threefold:

1. As a statutory trustee, the Public Trustee enjoys special powers conferred by legislation. Acting as a joint or co-trustee may constrain the Public Trustee in some respects.

2. The controls that are in place at the office of the Public Trustee would be rendered ineffective if the Public Trustee were to act as a joint or co-trustee.

3. The Public Trustee will not be placed in a position of assuming responsibility for the actions of another trustee over whom it has little or no control.

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12.0 REAL PROPERTY - INVOLVEMENT OF THE PUBLIC TRUSTEE

There are two primary capacities in which the Public Trustee may be interested where there is real property involved:

1. as the Personal Representative of an estate (and/or);

2. as the statutory guardian of the estate of a minor, or the trustee of the estate of a dependent adult, or missing person who is a beneficiary under intestacy or Will.

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13.0 PUBLIC TRUSTEE AND FEES

The *Public Trustee Act* allows fees to be taken by the Public Trustee for the services it provides. Section *35.1* of the *Public Trustee Act* states that the Public Trustee may charge for the costs, fees, compensation, expenses, and legal fees and charge for the provision of services or the carrying out of powers and duties pursuant to the *Public Trustee Act* or any other Act. This is reiterated in the Tariff of Costs for the office found in *s. 5* of the *Public Trustee Regulation*. Of course, there is some discretion on the part of the Public Trustee to charge for such services.

Other legislation acknowledges the right of those who function in capacities similar to that of the Public Trustee to be compensated for their services. For instance, the *Administration of Estates Act*, *s. 62*, provides that a judge may set the amount of compensation or remuneration for which the legal representative is entitled, unless that amount has been set and fixed in the Will. Additionally, the *Dependent Adults Act* acknowledges that a trustee of the estate of a dependent adult is entitled to compensation. Section *42.2* provides that a trustee is entitled to be compensated for the trustee's efforts, care, and trouble and for the time expended as trustee on behalf of the dependent adult. As well, *s. 42.3* provides that a trustee is entitled to be reimbursed for the direct expenses incurred and disbursements made on behalf of the dependent adult. Rule 128(2)(c) gives the court the power , at a hearing to pass interim or final accounts in the case of the trusteeship of a dependent adult, to set the compensation for the trustee and give directions with respect to compensation. The *Trustee Act* also has provisions pertaining to compensation for a trustee. Section *44* provides that a trustee is entitled to fair and reasonable allowance for his or her care, pains, and trouble and time in and about the trust estate, the amount being determined by the Surrogate Court in the case of a trust under a Will and the Court of Queen's Bench in all other circumstances. This, of course, does not abrogate from the right to have the amount of compensation determined by the trust instrument itself.

Given the Public Trustee's special position as the trustee of last resort, providing services for those for whom there is no one willing or able to act, the assessment and taking of fees for service is governed by a policy in which the Public Trustee's discretion is exercised so that the best interests of both clients and the general public are served. There are specific policies in place for the assessment and taking of fees for services provided.

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13.1 Legal Fees for the Appointment of the Public Trustee

In a court application to appoint the Public Trustee as trustee for a dependent adult, the Public Trustee will seek legal fees, GST, and disbursements from the client's estate only if the net value of the estate is $7,000.00 or greater at the date of the Court Order. If the value of the estate is less than $7,000.00 at the date of the Court Order, the Public Trustee will seek reimbursement for disbursements only from the Crown in right of Alberta. If the value of an estate is unknown at the time of the court application, the lawyer acting on behalf of the Public Trustee will wait until an inventory of the estate is filed with the court to determine the net value of the estate.

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13.2 Investigation Fees

Fees are charged for initial investigations on estates for which the Public Trustee has become involved. This is really only applicable in situations where the Public Trustee becomes involved in the administration of the estate of a deceased person or as a trustee of a dependent adult. Initial investigations involve producing an inventory of property in the estate; searching and securing personal documents including wills, securities, banking documents, etc.; and preserving and ensuring the security for any and all personal and real property of the individual. For the initial investigation, the Public Trustee currently charges the estate $100.00 per half day of investigation. The simpler the investigation, the less time required.

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13.3 Administration Fees for Official Guardian Trusts

Administration fees for official guardian trusts are divided into two categories: personal injury settlements and those other than personal injury settlements. For trusts involving personal injury settlements, a fee is charged on the capital funds received by the Public Trustee. This fee is a percentage and is calculated on a yearly basis but is not assessed or collected until the funds are to be released to the beneficiary (i.e., a minor who is about to reach the age of majority). Additionally, a fee is charged on income and disbursements concerning the trust. This includes income from pensions or annuities; all other income including interest on the funds held by the Public Trustee; payments for care, personal needs, medical and educational needs; payments for miscellaneous needs except for the purchase of investments, distributions, and taxes paid. The percentages charge range between 3/8 of 1% and 5%. The fees for official guardian trust administration for other than personal injury settlements are assessed in essentially the same manner except that there is no fee assessed for the payments for care, personal needs, medical and educational needs. There is, however, an income tax fee charged if the trust generates sufficient taxable income which is required to be reported to Revenue Canada. This is not so for the trusts dealing with personal injury settlements for they are not taxable until December 31st of the year that the beneficiary turns 21 years of age.

There is a postage fee charged for both types of official guardian trusts.

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13.4 Administration Fees for Deceased Estates

The fee structure and assessment, as it relates to the administration of a deceased person's estate, involves two primary components: the legal fee and the administration fee.

The legal fee relates to the production, preparation, and filing of documents associated

with obtaining a grant for the administration of the estate of the deceased. There is a minimum fee of $25.00 charged and a percentage based on the aggregate value of the estate.

The administration fees, like those for estates of mentally incompetent individuals and dependent adults, are based on capital receipts/disbursements and revenue receipts/disbursements as well as a specific fee for the redemption of term deposits and GIC's. In addition to the fee schedule based on the one that is used for the administration of the estates of mentally incompetent individuals and dependent adults, deceased estate administration fees also include fees for distributions made to the residual beneficiaries; transfers in specie to beneficiaries; and legacies paid or transferred in specie. Again these fees are based on percentages.

There are instances, however, where a grant of administration is not required for the Public Trustee to administer the estate of a deceased individual. Pursuant to *s. 21* of the *Public Trustee Act*, an estate which is comprised of personal property which does not exceed $1,000.00, may be administered by the Public Trustee without obtaining an order of the court. In these situations, the Public Trustee will assess a minimum fee. As well, there are instances where the Public Trustee may, by election, administer an estate rather than obtain a grant of administration from the court. This may be done pursuant to *s. 23* of the *Public Trustee Act* so long as the gross estimated value of the estate does not exceed the amount prescribed by regulation. In these situations a minimum fee of $150.00 is assessed.

As noted above, an initial investigation fee is also charged for these estates, and, if circumstances dictate, so is a care and management fee.

It should also be noted that a postage fee and G.S.T. are charged for the administration of these estates.

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13.5 Legal and Administration Fees (Supplemental)

1. Pursuant to *s. 37* of the *Public Trustee Act*, the Public Trustee is entitled to the same costs as are payable to counsel and solicitors.

   The Public Trustee is not entitled to solicitor-client costs (fees) unless there is a clearly established solicitor-client relationship between the office and a client represented. For example, although considerable time may be involved in approving a personal injury settlement on behalf of a minor, the Public Trustee does not take a solicitor-client fee since approving the settlement is a statutory duty and in most cases a solicitor-client relationship already exists between the next friend of the minor and the solicitor retained by the next friend to act on behalf of the minor.

   The Public Trustee, where interested in an estate or trust on behalf of a person suffering a disability, acts as an approving body with respect to any administration and Executor's fees taken. In *Re Welbourn (1979), 4* E.T.R. *122, 3 WWR 113* (Alta. Surr. Ct.) (subsequently followed in *Re Proniuk (1984), 18* E.T.R. *31* (Alta. Surr. Ct.) *Sywenky v Sywenky (1983), 14* E.T.R. *153* (Alta. Surr. Ct.) and *Re Prelutsky, [1982] 4* W.W.R. *309 (BC. S.C.))* the Court held that interim fees cannot be taken by an Administrator, Executor, or Trustee unless there has been approval of the court (or consent of all beneficiaries), but the court did acknowledge the right to retain sufficient funds to cover a reasonable commission once the accounts have been settled. Therefore, when the Public Trustee is faced with a situation where the office must approve administration fees, a number of matters must be addressed.

Firstly, the Public Trustee must determine the interest in the estate which it is representing. If this interest (i.e., a minor) is not the sole interest, the Public Trustee must confirm with the Administrator, Executor, or Trustee that they have obtained written consent from all other adults interested to the requested fees. The Public Trustee, before approving fees proposed by an Administrator, Executor, or Trustee, will also examine the current statement of accounts and if satisfactory, will consent to the fee, if all other beneficiaries consent. In cases where the Public Trustee questions the proposed fee, or the statement of accounts or the consents of all the other interests has not been obtained, the Public Trustee will request that the matter go before a judge for approval of the fees and the passing of accounts.

2. The Public Trustee acts as an approving body on behalf of those interests which it represents, with respect to solicitor client fees proposed by private solicitors in, for example, deceased estate administration and personal injury actions taken on behalf of minors.

   The Public Trustee may be faced with approving a percentage-based claim, an hourly rate multiplied by time (with or without bonus), a blend of both, or a contingency agreement.

   Depending on the situation, the Public Trustee's analysis of the legal fees requested will vary. Analysis will be based primarily on a detailed statement of account requested of the outside counsel.

   If the Public Trustee finds that, taking into consideration all of the circumstances, they are not in a position to approve an account, they will request that the account be taxed before the Clerk of the Court.

   The Public Trustee takes the position that the office cannot approve a contingency agreement entered into between a solicitor and a next friend of a minor prior to the settlement of the action taken on behalf of the minor, since the Public Trustee must retain the right to tax the solicitor's proposed fee if necessary.

   The Public Trustee will not "precommit" approval to a specific legal fee being taken by a solicitor acting on behalf of the next friend of a minor before the action has been settled.

   Percentage based claims for legal fees and claims based on hourly rates multiplied by time, or a blend of both, must be viewed on the merits of each specific situation.

   The Public Trustee must avoid a situation where two lawyers perceive themselves as acting on behalf of one client. For example, when an agent solicitor of the Public Trustee is acting on behalf of a minor and subsequently, the parent or guardian of the minor retains a second solicitor who also anticipates that they will be reimbursed for solicitor-client fees from any estate or funds to be received by the minor.

   Finally, in situations where the Public Trustee retains a solicitor in private practice to act as agent in a particular matter, the office clarifies, in advance, the solicitor-client fee relationship.

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13.6 Retention of Outside Agents by the Public Trustee

There are three situations in which the Public Trustee may retain a private solicitor to act on its behalf.

Firstly, where a private solicitor represents members of a class having identical interests with those of either minors, dependent adults, or missing persons whom the Public Trustee represents, and there is no conflict of interest, the Public Trustee may request that the private solicitor act on behalf of the Public Trustee and the minors, dependent adults, or missing persons, in this way eliminating duplication of effort and costs.

Secondly, where a matter requires specialty and expertise, i.e., insurance litigation, the Public Trustee may retain outside counsel to act on its behalf.

Thirdly, where the Public Trustee finds himself in a conflict position, wearing two hats as Executor or Administrator of an estate and guardian of the property of a minor, dependent adult or missing person who is interested in that same estate, the Public Trustee will continue in one capacity, preferably the neutral position of being the Executor or Administrator and retain outside counsel to act on behalf of the minor, dependent adult or missing person.

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